Supreme Court, U.S.
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No. 99-607

IN THE
SUPREME COURT OF THE UNITED STATES

RABBI ROBERT A. GOODMAN,
Petitioner,

v.

TEMPLE SHIR AMI and
RICHARD ASHENOFF,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED
(restated)

Whether the Establishment or the Free Exercise Clause precludes civil courts from considering a rabbi's lawsuit against his former synagogue and a board member for breach of a claimed oral contract, termination in violation of the synagogue's internal by-laws, and defamation, where (according to the state court) the evidence established that consideration of the lawsuit would require review of the religious beliefs of synagogue members.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as listed in the caption of the case: Rabbi Robert A. Goodman, Temple Shir Ami, and Richard Ashenoff.

Temple Shir Ami is a non-profit corporation. It has no parent company or publicly held company owning 10% or more of the corporation's stock.

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STATEMENT OF THE CASE AND FACTS

Rabbi Goodman's brief omits some of the most important facts in the case.

Temple Shir Ami's first contract with Robert Goodman had an original duration of two years, with an automatic one-year extension, unless either party gave notice of termination. (R. 13). "Serious concerns over the rabbi's performance" led the Temple's executive committee to recommend that the option year not be exercised. (R. 24, 508, 876; TA 50; TB 21). The Temple's board of directors, however, rejected the executive committee's recommendation, and instead exercised the option for the third year. (R. 24, 508, 887; TB 22, 26).

As the option year was drawing to a close, the Temple and the Rabbi entered into negotiations. (R.4). Members of the Temple's executive committee, though, began to have doubts about whether they wanted to retain Rabbi Goodman. The executive committee held a meeting, and the board members discussed Rabbi Goodman's rabbinical behavior. (R. 75, 585). Some of the concerns related to the Rabbi's violation of confidences of congregants. (R. 780-81). There were discussions of inappropriate remarks by the Rabbi to members of the congregation attending services or ceremonies. (R. 800-04). The executive committee members decided to strongly suggest to the full board of directors that negotiations with the Rabbi be discontinued and that the Rabbi be informed that he should pursue other employment. (R. 592; TA 55).

A few days later, the Temple's board met to consider the executive committee's recommendation against renewing

the Rabbi's contract. During the meeting, there were discussions of the Rabbi's performance. (R. 978). There were discussions about continuing breaches of confidence by the Rabbi. (TB 94). There were discussions of whether or not there should be *talis* (prayer shawl) available for the congregation. (TB 104). There was a discussion of the night when the *yahrtzeit* (memorial) candles were not lit, and the Rabbi himself went down and lit them. (R. 978; TB 95). Some board members "didn't like the way he ran a Chanukah service when we had our potato *latkes* [pancakes] afterwards." (R. 978; TB 106). The board members discussed the fact that the Rabbi wanted to "celebrate the holidays when the holidays are supposed to be celebrated. . . . Like if *Sukkot* came up on Wednesday the Temple wanted to celebrate it on a Friday. [The Rabbi] felt we should celebrate it on a Wednesday." (R. 978; TB 106). There was discussion of the fact that the Rabbi had wanted to order new prayer books for the high holidays, but the board had voted it down, because they were expensive. (R. 980).

The Rabbi was given an opportunity to speak during the meeting, and made a statement on his own behalf. (R. 613, 840-41).

The board of directors followed the recommendation of the executive committee and voted against proceeding with a renewal contract. (R. 17, 853). Nineteen board members voted against renewing the Rabbi's contract, five voted in favor of renewal, and one board member abstained. (R. 24, 853).

The Petition for Certiorari states that Temple Shir Ami has no tribunal, court or other judicial body for resolving its disputes. (Petition, at 2). However, under the by-laws of the Temple, the general membership of the Temple has "ultimate

authority over all aspects of the Temple," and can "override any decision of the Board or executive committee." (R. 99-100, 500). Rabbi Goodman never sought to bring the question of his employment to the general membership. (TB 55, 69; R. 917, 920).

Rabbi Goodman subsequently sued the Temple. In his Petition for Certiorari, he states that "In all of his claims against Temple Shir Ami, Rabbi Goodman seeks only damages." (Petition, at 7). However, Rabbi Goodman in his complaint asked alternatively for damages or for reinstatement to his position at the Temple. (R. 90).

The trial court dismissed Rabbi Goodman's case. The intermediate appellate court for the most part affirmed the trial court. *Goodman v. Temple Shir Ami*, 712 So. 2d 775 (Fla. 3d DCA 1998) (App.-1(b)-4). The appellate court found, under the facts of the case, that a court considering Rabbi Goodman's claims would have to consider religious matters: "In order for the trial court to have resolved these disputes, it would have had to immerse itself in religious doctrines and concepts and 'determine' whether the religious disagreements were a 'valid' basis for the termination of Rabbi Goodman's services." *Id.* at 777.

The appellate court further held that it would not be possible to determine the effect of the allegedly defamatory report and tortious interference without considering the sincerity of the stated religious beliefs of the board members. These alleged wrongs, the court noted, "occurred as part of this religious dispute and would require the trial court to weigh their effect on the board members as compared to the effects of the other considerations which clearly are religious disagreements. Inquiring into the adequacy of the religious

reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court." *Id.*

The appellate court concluded, however, that the civil courts *could* consider Rabbi Goodman's claim for breach of his first contract, as it would not "create excessive entanglements with religious beliefs, and thus does not preclude civil court intervention." *Id.*

The Florida Supreme Court accepted jurisdiction over the case, but subsequently dismissed the appeal for lack of appellate jurisdiction. *Goodman v. Temple Shir Ami*, 737 So. 2d 1077 (Fla. 1999).

REASONS FOR DENYING THE WRIT

I. This case involves the narrow application of well-settled law

Rabbi Goodman's petition jousts with a phantom of his own creation. The Florida court did not interpret this Court's precedent "to require absolute abstention in any case which in any way involved a religious organization and its clergy." (Petition, at 10). To the contrary, the Florida court instead simply held that under the facts of this case, the civil courts could properly decide one of Rabbi Goodman's claims, but could not decide his other claims without intruding into constitutionally-protected religious matters. In other words, this case involves the application of well-settled law,

including the law established in many cases in which this Court has previously denied certiorari.[1]

The Florida court applied the numerous precedents that dictate caution in intruding into a religious institution's selection of its spiritual leader. The Florida court's balanced, moderate application of well-settled law provides no reason for this Court to grant a writ of certiorari.

II. There is no conflict among the circuit courts on issues raised in this case

There is no conflict among the decisions of the federal circuit courts on the issues raised in the case.

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[1] *See Clapper v. Chesapeake Conference of Seventh-Day Adventists,* 166 F.3d 1208 (4th Cir. Dec. 29, 1998) (table, text available on Westlaw, 1998 WL 904528), *cert. denied*, 119 S. Ct. 2021, 143 L.Ed.2d 1033 (1999); *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606 (Minn. Ct. App.), *cert. denied*, 519 U.S. 870 (1996); *Olson v. Luther Memorial Church*, no. C0-95-1623 (Minn. Ct. App. Feb. 20, 1996) (1996 Minn. App. Lexis 213), *cert. denied*, 519 U.S. 870 (1996); *Pierce v. Iowa-Missouri Conference of Seventh-Day Adventists*, 534 N.W.2d 425 (Iowa 1995), *cert. denied,* 517 U.S. 1220 (1996); *Young v. Northern Illinois Conference of United Methodist Church,* 21 F.3d 184 (7th Cir. 1994), *cert. denied,* 513 U.S. 929 (1994); *Higgins v. Maher,* 258 Cal. Rptr. 757 (Ct. App. 1989), *cert. denied*, 493 U.S. 1080 (1990); *McDonnell v. Episcopal Diocese of Georgia,* 381 S.E.2d 126 (Ga. Ct. App. 1989), *cert. denied*, 493 U.S. 935 (1989); *Rayburn v. General Conference of Seventh-Day Adventists,* 772 F.2d 1164 (4th Cir. 1985), *cert. denied,* 478 U.S. 1020 (1986).

First, this claim of conflict is irrelevant to this case, which comes from a state court. By definition, the present case from the state courts cannot create conflict with a decision of a federal circuit. If indeed there is a conflict among the federal circuit courts, then the claimed conflict would be most squarely presented by a case that came from the circuit courts.

But more fundamentally, the Florida court's decision in this case is entirely consistent with the cases which Rabbi Goodman relies upon. He relies upon three cases, but each of them endorsed a careful, case-by-case analysis in determining whether the courts can resolve a dispute involving religious institutions and their clergy.

Rabbi Goodman relies heavily on *Farias v. International Church of the Foursquare Gospel*, No. 95-4784 (11th Cir. April 24, 1996), in which the court merely held that "it was premature for the district court to conclude that the evidence will automatically implicate ecclesiastical concerns." The court added that if "the evidence adduced during discovery involves the interpretation of ICFG's religious beliefs, laws, or practices, then ICFG should be permitted to renew their dismissal motion in connection with a summary judgment motion."

Rabbi Goodman also relies upon *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), but there the court held that the First Amendment barred the plaintiff's claims for age discrimination and violation of internal rules. While the court allowed the plaintiff's breach of oral contract claim to proceed, it stated that "any inquiry that Minker was unsuited for a particular pastorship would constitute an excessive entanglement in its affairs." *Id.* The present case, of course,

involves whether Rabbi Goodman was unsuited for a particular religious position -- Rabbi of Temple Shir Ami. Under *Minker*, his lawsuit would be barred.

Finally, Rabbi Goodman relies on *Drevlow v. Lutheran Church*, 991 F.2d 468 (8th Cir. 1993), but there the issue was *not* a church's decision to terminate a minister; rather, it was a claim by a minister against the synod for placing false information in his personal file and removing his name from the list of eligible ministers.

There is no conflict among the circuit courts on any issue in this case.

III. Rabbi Goodman's attempts to distinguish this Court's decision in *Serbian* provide no reason for granting the writ

Rabbi Goodman argues that this case should not be controlled by *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). But he is unable to exclude this case from the scope of *Serbian*.

Rabbi Goodman first attempts to distinguish *Serbian* on the basis that this case involves a written employment contract. This provides no basis for granting certiorari. Here, the Florida appellate court held that it could exercise jurisdiction over the claim based on breach of the written contract (the "first contract"), but not over the claim for breach of the claimed later oral contract. Rabbi Goodman's attempt to distinguish this case thus fails by its terms, since the Florida courts are exercising jurisdiction over the claim for breach of the written contract.

Rabbi Goodman also suggests that *Serbian* does not control this case because "Temple Shir Ami is a congregational religious organization which has not established a tribunal to decide its disputes." (Petition, at 11). This claim is wrong on the facts, and is legally irrelevant.

Temple Shir Ami has a body which can decide all issues. Temple Shir Ami is a congregational synagogue, and thus run by the congregation. Ultimate authority rests with the general membership. But Rabbi Goodman failed to bring his dispute to the congregation. His failure to bring the dispute to the general membership -- that is, his failure to exhaust available internal remedies -- is a reason for denying the writ, not granting it.

Furthermore, judicial abstention from deciding religious disputes applies to both congregational and hierarchical religious institutions. Courts may not decide religious disputes concerning a rabbi or Southern Baptist minister, just as they may not decide religious disputes concerning Catholic priests or Lutheran ministers. The congregational/hierarchical distinction is not relevant in clergy employment disputes. *See Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 31 n.2 (D. D.C. 1990); *Howard v. Covenant Apostolic Church*, 1997 Ohio App. Lexis 4180 (Ohio Ct. App. Sept. 19, 1997); *Chavis v. Rowe*, 459 A.2d 674 (N.J. 1983).

The congregational/hierarchical distinction applies in cases involving church property, control of the church, or schisms. When a church is divided, with both factions making claim to being the true church, and therefore owning the property of the church, there must be a determination of who has control of the church and the property. "The State has an obvious and legitimate interest in the peaceful

resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). However, "the state's interest in providing a forum for ecclesiastical disputes is substantially diminished where the controversy does not concern formal title to property." *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 725-26 (11th Cir. 1987).

In cases involving church property disputes or disputes between competing factions within a church, the congregational/hierarchical distinction is significant because it informs the courts of who the final decision-maker is, and thus whose decision must be accepted by the courts. "The distinction drawn . . . between the types of congregational and hierarchical church polities was relevant only to determining the ecclesiastical body to which the civil courts must defer in determining rights to use of property. " *Crowder v. Southern Baptist Convention*, 828 F.2d at 720 n.20. But this is not at issue in the present case.

The general rule against judicial review of religious matters, stated in *Serbian* and many other cases, fully applies to this case.

IV. There is no reason to grant the writ based on Rabbi Goodman's claim for violation of his constitutional rights

Rabbi Goodman claims that his constitutional rights are violated by the decision of the Florida court. He cites no authority to support his claim, and we are aware of none. Further, he has not suggested that this is a reason for granting the writ.

In addition, Rabbi Goodman did not rely on an equal protection claim in Florida's intermediate appellate court. This argument is thus not preserved.

CONCLUSION

Based on the above, Temple Shir Ami and Richard Ashenoff request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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